IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 884 OF 2005

Balasaheb Shankar Patil & Anr. ... Appellants.

Vs.

Narayan Dnyanu Sutar ... Respondents.

Mr. S.M. Railkar for the appellants.

CORAM : ANOOP V. MOHTA,J.
DATED : 5th July, 2007

P.C.

1. The question is whether the plaintiffs are entitled for the compensation for injury caused by an injunction wrongfully obtained, as contemplated under Article 90 of the Limitation Act -1963, from the date of injunction order, "when the injunction ceases"? and or "when the said injunction order attains its finality".

2. The relevant Article 90 is reproduced for reference.

"Article No.	Description suit.	Period of Limitation.	Time from which period begins to run.
90	For compensation for injury caused By an injunction wrongfully	3 years	When the injunction ceases."

obtained.

3. Admittedly, in the present case, the Lower Court has granted injunction on 29th May, 1978 in a Regular Civil Suit, filed by the respondent with a prayer to restrain the appellants from enjoying the Sugar-cane crop and other crops in the areas situated at village Kodoli, Tq. Panhala. On 30/04/1983 the injunction application Exh.5 was dismissed. Being aggrieved by the said order an Miscellaneous Civil Appeal No. 116 of 1983 was preferred on 13/05/1983. The appeal was admitted and the parties were directed to maintain status-quo. On 12/01/1984, the said appeal was also dismissed.

4. On 31st December, 1984, the said suit was withdrawn. The appellant, therefore, on 17/12/1986 preferred a Regular Civil Suit No. 119 of 1986 for the compensation of Rs.12,000/- alongwith the interest against the said Narayan for the injunction obtained wrongfully from the Court by misleading the Court and thus preventing the appellants from enjoying the suit land. The trial Court by its order dated 12/03/1998 dismissed the suit on the ground of limitation, though on merit, Court has considered the issues in favour of the plaintiff/ appellant as injunction application was

dismissed on 30/04/1983.

5. The Appellate Court, by order dated 02/09/2004 dismissed the appeal preferred by the appellant by holding that the suit is barred by limitation in view of the Article 90 of the Limitation Act.

6. In the present case, admittedly, the injunction order was granted on 29th May, 1978. The said order was continue till the dismissal of the injunction application. On 13/05/1983 Miscellaneous Appeal was preferred and the parties were further directed to maintain status-quo. The appeal being the continuation of the application or proceedings, the plaintiff/ appellant could not have, till the decision of the said appeal and or vacation of the injunction or status-quo, applied for damages on the ground of injury caused by injunction wrongfully obtained. I am of the opinion that, the injunction ceases, in the facts and circumstances of the case, only when the Miscellaneous Civil Appeal dismissed on 12th January, 1984. The respondent thereafter, withdrew the Civil Suit No.33/1978 on 31/12/1984. The disposal of the suit itself was on 31st December, 1984. On the disposal of the appeal on 12th January, 1984, the

finality, has been attained to the injunction order. The order of Appellate Court to maintain status-quo on 13th May, 1983 is nothing but a continuation of the grant of injunction, even after the dismissal of the injunction application. It is only after the decision of the Appellate Court on 12th January, 1984, the plaintiff entitled to claim damages based on the injury caused by an injunction wrongfully obtained. The "injunction ceases" only after the final decision against the order of rejection of the injunction application.

7. The concept of "injunction" has various factors and stages i.e. temporary injunction, permanent injunction or perpetual injunction. Merely because in the temporary injunction ceases, it does not become final. An appeal against grant or rejection of such injunction a statutory remedy is available to the aggrieved party. Therefore, unless such order attain finality, the "injunction" cannot be stated to be "ceases".

8. Therefore, in the facts and circumstances of the case, I am of the view that as the plaintiff/ appellant could not have filed the suit for damages,

for the wrongful injunction obtained by the respondent, till its finality.

9. Taking all this into account, the Judgment and decree passed by the Appellate Court, dated 02/09/2004 by Additional District Judge, Kolhapur is quashed and set aside. The judgment and order dated 12/03/1988 passed by the Civil Judge, Junior Division, Panhala is set aside in reference to issue No.5 and issue Nos. 1 to 4 are restored.

10. In the result, appellant's suit is decreed for compensation at Rs.12,000/- with interest at the rate of 6% from the date of filing of the suit till its realization.

11. The Second Appeal is allowed accordingly.

12. No costs.

[ANOOP V. MOHTA, J.]